IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27/09/2004

Coram

The Honourable Mrs. Justice PRABHA SRIDEVAN

Writ Petition No.10079 of 1997

The Management of Vellore
Co-operative Sugar Mills Ltd.,
rep. by Special Officer,
Vellore Sugar Mills,
Near Tiruvalam
Pin-632 519. .. Petitioner

-vs-

1. The Presiding Officer,
Labour Court,
Vellore.

2. B. Janardhanam .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records relating to the order passed by the first respondent in its Award in I.D. No.9 of 1993 dated 19.12.1996 and quash the same.

!For Petitioner : Mr. Vijay Narayan,
Senior Counsel for
Mr. R. Parthiban.

^For Respondents : Mr. G. Jayachandran (For R-2)

:O R D E R
The petitioner is the Co-operative Sugar Mills. The second respondent was first engaged by the petitioner as a Clerical Apprentice and after the end of the one year probationary period, he was not confirmed, but later on, based on the exigencies of the petitioner, he was engaged as Telephone Operator for 183 days in the 1983-84 Season, 189 days in the 1984-85 Season and 247 days in the 1985-86 Season. After 21.7.1986, the services of the second respondent were not continued. Seven years later, the second respondent raised an Industrial Dispute claiming that as a daily wages employee, he was entitled to the protection of Section 25F of the Industrial Disputes Act, 1947 and since the provisions of this Section were violated, he was entitled to be reinstated. The Labour Court awarded reinstatement with back-wages and so, this writ petition has been filed.

2. Learned counsel for the petitioner submitted that it has been held in various decisions of the Supreme Court that sugar industry is a seasonal industry, and the daily wages employees who are engaged in this industry are not entitled to notice under Section 25F of the Act. It was submitted that as per Section 25A, the provisions of Section 25C to Section 25E will not apply to any establishment which is of a seasonal character. It was further submitted by the learned counsel for the petitioner that the second respondent was not appointed in accordance with the provisions of the Co-operative Societies Act and since he had not been notified through the Employment Exchange, his appointment his irregular and therefore, the question of an illegal termination and consequent reinstatement will not arise. For this purpose, he relied on a recent judgment of the Supreme Court in A. Umarani vs. Registrar of Co-operative Societies [2004 A.I.R. S.C.W. 4462]. Learned counsel further submitted that the petitioner had slept over the matter for seven years and thereafter thought it fit to raise the dispute and it ought to have been dismissed on the ground of laches. The following decisions were relied on by the learned counsel for the petitioner :
2003 (I) L.L.J. 284
2003 (4) C.T.C. 525
2001 (2) L.L.N. 1129
2000 (1) L.L.N. 378
A.I.R. 1996 S.C. 332
A.I.R. 1997 S.C. 2698
2002 (II) L.L.J. 1006
A.I.R. 2000 S.C. 839
2002 (II) L.L.J. 297
2002 (III) L.L.N. 556

3. Learned counsel for the second respondent, on the other hand, submitted that Section 25B of the Industrial Disputes Act refers only to Sections 25C to 25E and therefore, Section 25F will squarely apply to the second respondent. It is also submitted that the judgment of the Supreme Court referred to by the learned counsel for the petitioner in Umarani's case cited supra had arisen out of the decision of a Division Bench of this Court in 2002 W.L.R. 876 [L. Justine/V. Haridas vs. The Registrar of Co-operative Societies, Chennai] and that was only with reference to G.O. Ms. No.86, Co-operation, Food and Consumer Protection Department dated 12.3.2001. Even there, the Division Bench had held that the appointments made between 9.7.1980 and 11.3.20 01 were protected and could be regularized. In these circumstances, that decision cannot apply to the facts of the case on hand. Learned counsel further submitted that it really cannot be said that the dispute suffers from laches, since documents have been marked to show that various representations had been made by the second respondent to the petitioner and it is only when he realised that the matter will not be resolved amicably that he raised the industrial dispute. Learned counsel referred to the following decisions :
2002 A.I.R. S.C.W. 4428
2003 A.I.R. S.C.W. 1340
2002 W.L.R. 876

4. In A.I.R. 1997 S.C. 2698 [Anil Bapurao Kanase vs. Krishna

Sahakari Sakhar Karkhana Ltd.], the employee was engaged in the seasonal work in the Chemistry section of the sugar factory and when the work was over, his services were terminated. He contended that his termination was in the nature of retrenchment and in violation of Section 25F of the Act. The Supreme Court held that since the work is of a seasonal nature, the principles of the Act will have no application. The Supreme Court, however, gave directions to the respondent in that case to maintain a register and engage the workman when the season starts in the succeeding years in the order of seniority. In 2003 (4) C. T.C. 525 [The Management of Melur Co-operative Urban Bank Limited vs. Deputy Commissioner of Labour, Madurai], it was held that appointments made without going through the Employment Exchange is not merely an irregular appointment, but an illegal appointment and that a person illegally appointed does not acquire the status of employee. In 2000 (1) L.L.N. 378 [The Management, Salem Co-operative Housing Society Limited, Salem vs. Presiding Officer, Labour Court, Salem], employees of the Co-operative Society had been appointed irregularly and without going through the Employment Exchange. On their application under Section 33C(2), the Labour Court computed the benefits to the employees even without their proving their eligibility. It was held that the appointments were in violation of the relevant rules and therefore, the employees were not entitled to any amount and hence, the award passed by the Labour Court was quashed. In A.I.R. 1996 S.C. 332 [Morinda Co-operative Sugar Mills vs. Ram Kishan], it was held that the work at the appellant sugar mills being seasonal work, the respondents cannot be said to have been retrenched. In 2002 W.L.R. 876 [L. Justine/V. Haridas vs. The Registrar of Co-operative Societies, Chennai], the First Bench of this Court held that appointments of staff made to Co-operative Societies "in violation of cadre strength or the prescriptions of educational qualifications cannot stand and are held to be null and void".

5. In A.I.R. 2000 S.C. 839 [Nedungadi Bank Ltd. vs. K.P. Madhavankutty], the Supreme Court dealt with the question of laches as follows :

"Law does not prescribe any time limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one."

In 2000 (II) L.L.J. 297 [North West Karnataka Road Transport Corporation, Hubli vs. Abdul Salam], a Division Bench of the Karnataka High Court allowed the appeal filed by the Management on the ground that the industrial dispute was raised with a long delay and suffered from unexplained laches. In 2002 (3) L.L.N. 556 [Kudumiyanmalai Primary Agricultural Bank Limited vs. Presiding Officer, Labour Court, Tiruchirapalli], this Court held that the industrial dispute filed after a long delay ought to be dismissed on the

ground of laches.

6. In 2003 A.I.R. S.C.W. 1340 [Pramod Jha vs. State of Bihar], the Supreme Court dealt with the underlying object of Section 25F of the Act and held as follows :
"Firstly, a retrenched employee must have one month's time available at his disposal to search for alternate employment, and so either he should be given one month's notice of the proposed termination or he should be paid wages for the notice period. Secondly, the workman must be paid retrenchment compensation at the time of retrenchment, or before, so that once having been retrenched there should be no need for him to go to his employer demanding retrenchment compensation and the compensation so paid is not only a reward earned for his previous services rendered to the employer but it is also a sustenance to the worker for the period which may be spend in searching for another employment."

7. It is not in dispute that the first respondent was taken as a daily wages worker bypassing the Employment Exchange. In Umarani's case cited supra, the Supreme Court, while dismissing the appeal filed against the judgment in Justine's case also cited supra, held that no appointment can be made in deviation of or departure from the procedures laid down in the said statutory rules. And further, no regularization is permissible in exercise of the statutory power conferred under Article 162 of the Constitution, if the appointments have been made in contravention of the statutory rules. The Supreme Court quoted from 2003 (5) S.C.C. 12 [Surendra Kumar Sharma vs. Vikas Adhikari] regarding appointments made bypassing the Employment Exchange, thus frustrating the hopes of those who are waiting at the Employment Exchange for a long time. To the same effect are the observations of the Supreme Court in J.T. 2003 (2) S.C. 88 [Ramakrishna Kamat vs. State of Karnataka].

8. The submission of the learned counsel for the second respondent that the bar under Section 25A of the Act only applies to Sections 25 C to 25E and not to Section 25F must be accepted, but at the same time, in all those decisions, it has been consistently held that sugar industry is a seasonal industry and that reinstatement cannot be ordered, and hence, directions were given. Further, even assuming that the first respondent is entitled to the protection of Section 25F of the Act, the order of reinstatement cannot be granted since the first respondent's appointment is not in accordance with the statutory provisions. In fact, from the records, it is seen representations have been made by the second respondent to regularize his services, to which the petitioner has replied that since his name has not been notified through the Employment Exchange, his request cannot be granted. From the records, it is also seen that the Special Officer has been asked to explain why a person has been properly appointed through the Employment Exchange for the post of Telephone Operator and why the second

respondent has been engaged off and on, on a daily basis. It appears that thereafter, the petitioner has appointed persons in accordance with the rules and through the Employment Exchange.

9. The third factor in favour of the petitioner is the ground of

laches. The second respondent has been engaged only depending upon the exigencies of the petitioner and after his disengagement in the year 1986, he has waited for seven years to raise the industrial dispute. His employment with the petitioner itself was not a continuous one, but only a seasonal one. For seven years, the discontinuance of his engagement was not objected to. No doubt, it is admitted by the petitioner that in the 12 months preceding 20.7.1986, the second respondent had worked for 247 days. But, yet, the fact remains that he has worked for only 183 days in the 1983-84 season and for 189 days only in the 1984-85 season. In these circumstances, it is difficult to order reinstatement with back-wages as directed by the Labour Court.

10. In 2003 (8) S.C.C. 248 [Haryana Tourism Corporation Ltd. vs. Fakir Chand], daily wagers who were working in a fast food center of the Corporation from 1988 to 1991 were retrenched on the ground of change of policy. The award of reinstatement with back wages in that case was set aside and it was held as follows :
"The respondents herein were engaged to work on daily-wage basis. They were not recruited through the Employment Exchange or through any other accepted mode of selection. It is also not known whether there was any advertisement calling for applications for appointment of these respondents. None of the respondents was regularized in service. All of them continued as daily-wage employees and their services were terminated as early as 1991."

On facts, there are differences between that case and the case on hand. But, the above paragraph is extracted only to show what weighed with the Supreme Court to set aside the award of reinstatement.

11. In the above circumstances, the claim of the second respondent cannot be granted because :
(a) he has raised the dispute belatedly; (b) his appointment is not legal and cannot be regularized;
(c) his engagement was only based on exigencies and came to an end since the practice of bypassing the Employment Exchange was disapproved of.

12. The writ petition is, therefore, allowed. However, there will be no order as to costs. Consequently, W.M.P. No. closed.

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Index : Yes
Website : Yes

To

The Presiding Officer,
Labour Court,
Vellore.